



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL APPEAL 75 OF 2017**

**CORAM: D.S. MAJANJA J.**

**BETWEEN**

**PAUL KARIMI KITHINJI.....APPELLANT**

**AND**

**JOSEPH MUTAI KIRERIA.....RESPONDENT**

***(Being an appeal from the Judgment and Decree of Hon. C.A. Mayamba, SRM***

***dated 12<sup>TH</sup> April 2017 at the Senior Resident Magistrates Court***

***at Githongo in Civil Case No. 37 of 2016)***

**JUDGMENT**

1. The respondent was injured in a road traffic accident that took place on 19<sup>th</sup> March 2015 along the Meru-Nkubu road involving a collision of two vehicles; Isuzu lorry registration number KBX 058J and a Toyota Matatu registration number KBX 953K in which he was a passenger. The issue of liability was settled with the appellant bearing full liability as against the respondents while the respondent bore 85% liability as against the co-defendant. This appeal is only against the award of general damages as the trial magistrate awarded Kshs. 250,000/-.

2. According to the plaint, the plaintiff sustained minor lacerations on the face and segmental fracture of the right proximal ulna. The nature and extent of the injuries was not so much disputed. The appellant, in his evidence, produced the discharge summary showing he had been admitted at Meru Level 5 Hospital after the accident. The state of his health was summarised in the medical report prepared by Dr Nicholas Koome (PW 2) who testified. He told the court that the respondent was admitted to Meru General Hospital for 3 days for minor lacerations on the face and the segmental fracture of the right ulna. The fracture was managed by plaster of paris. At the time of examination, the respondent was complaining of pain. He was of the opinion that the respondent would fully recover without any disability and the pains would subside.

3. Before the trial court, the respondent urged the court to award Kshs. 500,000/- as general damages. He cited the case of ***Mushambi Onde Gona v Associated Vehicle Assemblers Limited and Another MSA HCCC No. 919 of 1991 (UR)*** where the court awarded the plaintiff Kshs. 380,000/- as general damages in 1993. The plaintiff sustained a severe comminuted fracture of the radius and ulna and of the right arm, cut wound on the scalp with mild concussion, abrasion on the right hand and soft tissue injuries to the knees. In ***Jane Munguti v Simon Peter Mwangi and Another MSA HCCC No. 910 of 1991 (UR)***, the plaintiff suffered a fracture of the middle third shaft of the radius and ulna, dislocation of the left acromioclavicular joint, contusion of the chest wall, lacerations on the shoulder and upper arm and was awarded Kshs. 380,000/- in 1993.

4. The appellant suggested that a sum of Kshs. 150,000/- would be reasonable compensation to the respondent. He cited the case of ***James Kariuki Muraya v David Muturi Mwangi NRB CA HCCA No. 621 of 2002 [2004] eKLR*** where the plaintiff sustained a cut wound over the right eye lid, fracture of the ulna and radius of the left forearm and a cut all over the shoulder. He could not work for 8 months and was awarded 15% disability. The court awarded Kshs. 150,000/- in 2004. In ***Francis Mwangi Muchine v Francis Kimani Mbugua NRB HCCC No. 2637 of 1994 [2001] eKLR***, the plaintiff sustained a fracture of the left humerus, left tibia and fibula. He was awarded Kshs. 100,000/- in 2001.

5. For an appellate court to interfere with an award of damages, it must be shown that the trial court, in awarding damages, took into

consideration an irrelevant factor or failed to consider a relevant fact or that the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied (see **Butt v Khan [1981] KLR 349**).

6. My assessment of the injuries sustained by the respondent is that they were very minor injuries on the face and a fracture that the doctor confirmed had healed and would not leave any permanent disability. Having considered the cases cited, I find those cited by the respondent reflect more serious injuries particularly multiple fractures and the amount awarded is on the higher side. Those decisions are rather dated having been decided about 20 years prior to the date of the judgment before the trial court. The cases cited by the appellant, though dated are more reflective of current trends and more relevant since they also reflect minor injuries sustained by the plaintiff.

7. Taking the nature of the relatively minor injuries into account and the decisions cited, I find and hold that the sum of Kshs. 250,000/- was excessive and I reduce it to Kshs. 150,000/-.

8. I allow the appeal and set aside the award of Kshs. 250,000/- as general damages and substitute it with an award of Kshs. 150,000/-. That sum shall accrue interest from the date of judgment before the trial court.

9. The respondent shall pay costs of this appeal assessed at Kshs. 20,000/-.

**DATED and DELIVERED at MERU this 7<sup>th</sup> day of June 2018.**

**D.S. MAJANJA**

**JUDGE**

Mr Kariuki instructed by Mithega and Kariuki Advocates for the appellants.

Mr Kiogora instructed by Kiogora Arithi Advocates for the respondent.